U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

DATE: JAN 10 2012 Office: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an adjunct assistant professor of international politics at [redacted] Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but determined that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On motion, the petitioner submits a brief from counsel, three witness letters, and exhibits relating to the petitioner's work with the news media.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

There is no dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in dispute is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transportation, 22 I&N Dec. 215, 217-18 (Comm'r. 1998), has set forth several factors that U.S. Citizenship and Immigration Services must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" requires future contributions by the alien and does not facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO previously acknowledged the intrinsic merit of the petitioner's area of expertise, Korean international relations, and the national scope of the petitioner's proposed work. (The AAO writes the present decision days after the death of [redacted] an event that shone even more of a spotlight on the volatility of relations between North Korea and South Korea.) At issue is the question of whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The motion includes documentation about various media outlets that have carried the petitioner's opinion pieces, such as the Wall Street Journal. The AAO acknowledged the petitioner's published work when the petitioner submitted copies previously, but found that the petitioner had failed to "demonstrate the ultimate influence of these publications. The record lacks evidence that other international relations experts have cited the petitioner's published work, that professors at a significant number of independent institutions have assigned these articles as required reading or comparable

evidence of the influence of the above articles." The AAO also stated that the petitioner had not shown that his efforts "represent more than the typical foreign policy discourse among those in academia and think tanks."

On motion, the petitioner submits materials that show more clearly that he is not merely a self-appointed pundit who puts forth his unsolicited views in letters to the editor, blog posts or the comments section of news stories. Rather, major, respected news outlets actively seek out his opinions and commentary, indicating that the highest sources take the petitioner's views seriously on the important subjects he discusses.

Counsel, on motion, asserts that the petitioner and his witnesses were previously unsure of the caliber of evidence required to show eligibility for the national interest waiver. On motion, the petitioner seeks to remedy the deficiency by submitting more specific witness letters.

[redacted], states in his latest letter:

> No single individual is wholly responsible for policy planning on a target nation of such vital U.S. national interest like North Korea. At the same time, few academics, and no South Korean national working in the United States, have been as presciently and consistently making policy-relevant arguments on the issue as [the petitioner].

[redacted] at the time of the motion a national intelligence fellow at the Council on Foreign Relations, previously held a number of intelligence posts for the United States government, most recently as director of Korea, Japan, and Oceanic Affairs at the National Security Council. [redacted] asserts that the petitioner's efforts to remain in the United States "is . . . certainly a matter of significant interest to the U.S. government."

[redacted] who operates a blog at http://freekorea.us, states:

> [My blog] has been cited in [redacted] among others. I have also given testimony before the former House International Relations Committee, and have made unofficial contributions to proposed legislation through readers who work on Capitol Hill. I was summoned to the office of one U.S. Senator to personally brief him on North Korea-related issues on three separate occasions. . . .
>
> I write . . . as a member of the American voting public who is improbably blessed with a global audience of journalists, diplomats, policy-makers, and lawmakers, and whose own ideas have been profoundly influenced and informed by reading [the petitioner's] work. . . .

> In my ten-plus years of studying North Korea, I have learned of just two people on this Earth who are capable of reading and understanding North Korea's threats, inducements, and propaganda in the original Korean, and of giving American audiences a coherent understanding of their complex, almost untranslatable nuances, and of their historical and cultural overtones. [The petitioner] is one of them. . . .
>
> I have also found great clarity in his analysis in [redacted] No other observer has done more to inform my own understanding of the North Korean regime's lexicon and pathology than [the petitioner].

The AAO previously dismissed the petitioner's appeal based largely on a lack of corroboration and specificity. On motion, the petitioner has addressed and remedied these shortcomings and established, by a preponderance of evidence, that he is a respected and influential expert on policy relating especially to North Korea. The petitioner has shown that the benefit of retaining his services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The AAO withdraws its decision of April 21, 2011, and the director's decision of January 26, 2010, and approves the petition.